

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK**

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IN RE MERRILL LYNCH AUCTION  
RATE SECURITIES LITIGATION

: Master Case File  
: No. 09-md-2030 (LAP)  
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This Document Relates To  
No. 1:09-cv-5403-LAP  
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: **ECF Case**  
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:

**DEFENDANT’S MOTION TO DISMISS  
PLAINTIFF’S SECOND AMENDED COMPLAINT**

Defendant Merrill Lynch, Pierce, Fenner & Smith Incorporated (“Merrill Lynch”) hereby moves to dismiss the Second Amended Complaint in its entirety and with prejudice pursuant to Federal Rules of Civil Procedure 12(b)(6) and 9(b) and the Private Securities Litigation Reform Act of 1995, 15 U.S.C. § 78u-4.

Merrill Lynch has filed contemporaneously herewith a Memorandum of Law in support of this Motion and an accompanying Declaration of A. Inge Selden III dated November 18, 2009.

Dated: November 18, 2009

Respectfully submitted,

/s/ Carl S. Burkhalter

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